

RAIN AND HAIL INSURANCE SERVICE, INC.)	AGBCA No. 97-172-F
and RAIN AND HAIL L.L.C.,)	
(1996 SRA))	
)	
Appellants)	
)	
Representing the Appellants:)	
)	
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DECISION OF THE BOARD OF CONTRACT APPEALS

January 22, 1999

OPINION BY ADMINISTRATIVE JUDGE JOSEPH A. VERGILIO

On June 13, 1997, the Board received this appeal from Rain and Hail Insurance Service, Inc. (RHIS), and Rain and Hail L.L.C. (R&H)¹ (Appellants), of West Des Moines, Iowa, involving a 1996 Standard Reinsurance Agreement (SRA) with the Federal Crop Insurance Corporation (FCIC or Government).

¹ RHIS asserts that pursuant to a plan of reorganization approved and adopted by RHIS shareholders, R&H replaced RHIS as the operational entity responsible for this agreement, effective May 1, 1996 (Complaint at 2 (¶ 5)). Hence, the dual appellants, to which the Government has not objected.

By regulation, 7 C.F.R. §§ 24.4(b), 400.169(a)-(d), the Board has jurisdiction over this appeal. The parties have submitted this appeal on the record, without a hearing, pursuant to Board Rule 11. The evidentiary record closed; the parties filed and served briefs and a reply brief.

Appellants maintain that the SRA obligated the Government to make a payment on September 27, 1995, which was not made until October 31, 1995. Further, they contend that the SRA obligated the Government to pay interest for the period September 27, through October 31, 1995; the SRA specifies that interest is to be paid in accordance with the interest provisions of the Contract Disputes Act (CDA), 41 U.S.C. §§ 601-613.² In this matter, the Appellants seek to recover interest, claimed to be \$9,659. The Government asserts that the SRA does not obligate the payment of interest, because RHIS never submitted more than a routine request for payment RHIS did not submit a claim that would trigger the running of interest under the procedures found in the CDA. The Government also takes issue with the September 27 date, as it contends that it was not obligated to make a payment on that date because the SRA was not yet effective. That is, the Government maintains that the SRA did not become effective until it accepted and approved a Plan of Operation on October 27, 1995; the Appellants contend that, but for Government delays, the Government would have accepted and approved the plan prior to September 27.

The Board concludes that the Appellants proffer the proper interpretation of the interest provision, whereas the Government asserts an unreasonable interpretation. That is, the SRA, with its reference to the CDA, dictates the rate and method of calculating interest to be paid by the FCIC; the Board does not read the SRA provision as stating (explicitly or by implication) that a claim (certified, if the amount sought exceeds \$100,000) to a Contracting Officer is a prerequisite to the recovery of interest. The record reveals that, but for Government delays in the approval process, the 1996 SRA would have been effective at the time RHIS sought payment of the first installment. Payment of the first installment should have occurred by September 27, 1995. Accordingly, the Board grants the appeal, with an adjustment to the interest due for the period in question. The FCIC shall reimburse the Appellants \$9,526.52.

FINDINGS OF FACT

The Standard Reinsurance Agreements

1. In 1994, the FCIC entered into an SRA with CIGNA Property and Casualty Insurance Company and RHIS. This 1995 SRA covered the period July 1, 1994, through June 30, 1995. (Appeal File (AF) at 268, 270, 290.) The SRA establishes the terms and conditions under which the

² Neither party contends that this contract or appeal is subject to the CDA, although the FCIC is a “wholly owned Government corporation” as specified in the CDA (41 U.S.C. § 602(a); 31 U.S.C. § 9101(3)(D)). Further, the Appellants do not seek relief pursuant to the Prompt Payment Act, 31 U.S.C. §§ 3901-3907 (1994). Accordingly, the Board resolves the questions posed in the context in which they were raised, namely, is the Government obligated to reimburse the Appellants for the interest claimed under the terms of the SRA.

FCIC will provide premium subsidy, expense reimbursement, and reinsurance on multiple peril crop insurance policies sold or reinsured by CIGNA and RHIS under the Federal Crop Insurance Act, as amended, 7 U.S.C. § 1501 *et seq.* (AF at 268).

2. The 1995 SRA specifies that it will continue in effect from year to year with an annual renewal date of July 1 of each succeeding year unless the FCIC or CIGNA or RHIS gives at least 180 days advance notice in writing that the agreement will not be renewed (AF at 286 (¶ V.J)). Neither party gave such notice; however, as detailed below, the parties entered into a 1996 SRA, covering the period July 1, 1995, through June 30, 1996.

3. The President of RHIS, on behalf of CIGNA Insurance Company (a different entity than that signing the 1995 SRA, Finding of Fact (FF) 1),³ signed the 1996 SRA on October 26, 1995, which the FCIC approved and accepted with a signature and date of October 27, 1995 (AF at 157). As relevant to this decision, the 1996 SRA contains the same terms and conditions as the 1995 SRA.

4. The SRAs specify that the “Agreement is not effective until FCIC has approved the Company’s Plan of Operation (Plan)” (AF at 149 (¶ V.F.1.a), 282 (¶ V.F.1.a)).

5. Under the SRAs, the FCIC agrees to pay an “expense reimbursement of twenty-seven percent (27.0%) for all eligible group risk plan crop insurance contracts” (AF at 145 (¶ IV.A), 278 (¶ IV.A)). The SRAs specify that “expense reimbursement” will be paid in two installments. The first installment “will be included in the Monthly Summary Report containing the data obtained from accepted acreage reports.” (AF at 145 (¶ IV.D.1), 278 (¶ IV.D.1).)

6. The SRAs define “FCIC payment date” to mean “the first banking day following the fourteenth calendar day after FCIC receives the accounting report and supporting data upon which any payment is based” (AF at 136 (¶ I.K), 269 (¶ I.K)).

7. A general provision of the SRAs addresses interest due by the FCIC. The provision states, in full: “FCIC will pay interest to the Company in accordance with the interest provisions of the Contract Disputes Act (41 U.S.C. 601 *et seq.*)” (AF at 148 (¶ V.C.1), 281 (¶ V.C.1).)

8. The CDA, 41 U.S.C. § 611, specifies:

Interest on amounts found due contractors on claims shall be paid to the contractor from the date the contracting officer receives the claim pursuant to section 605(a) of this title from the contractor until payment thereof. The interest provided for in this section shall be paid at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41 (85 Stat. 97) for the Renegotiation Board.

The referenced section 605(a) states, in pertinent part:

³ RHIS was the managing general agent for CIGNA (AF at 309).

All claims by a contractor against the government relating to a contract shall be in writing and shall be submitted to the contracting officer for a decision. . . . The contracting officer shall issue his decisions in writing, and shall mail or otherwise furnish a copy of the decision to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of his rights as provided in this Act.

Section 605(c)(1) requires contractor certification of claims in excess of \$100,000.

9. The SRAs make no mention of a Contracting Officer, of a claim, or of any company rights or obligations under the CDA. The SRAs expressly provide for dispute resolution pursuant to regulation, not the CDA: “If the Company disputes action taken by FCIC under any provision of this Agreement, the Company may appeal to FCIC in accordance with the provisions of 7 C.F.R. § 400.169” (AF at 155 (¶ V.R), 288 (¶ V.R)).

Actions regarding the SRAs

10. The FCIC issued bulletin MGR-95-016, dated May 16, 1995, which states in pertinent part: “As the term of the 1995 Standard Reinsurance Agreement (Agreement) is two years, submissions for the 1996 reinsurance year require only a submission of the 1996 Plan [of Operation]. However, certain annual certifications and requests for documentation must be submitted” (AF at 1).

11. Under cover letter dated June 16, 1995, RHIS submitted to the FCIC its 1996 Plan of Operation (AF at 4-5, 7-19). Under cover letter dated June 30, 1995, RHIS submitted to the FCIC what RHIS described as exhibits “to complete the 1996 SRA filing” (AF at 20-117).

12. On September 11, 1995, RHIS submitted an accounting report; RHIS anticipated that, based upon the submission, it would receive payment of the first installment, FF 5 (AF at 118, 121). While the accounting report is not part of the record, RHIS made references to the September 11 date in letters of October 11 and 12, 1995, well prior to the initiation of this dispute process (AF at 118, 121). The Government’s answers, in response to assertions in the complaint, that it lacks sufficient facts to admit or deny the date the first installment was due, (AF at 243 (Answer, ¶¶ 8, 9), 248 (Complaint, ¶¶ 8, 9), does not cause the Board to question the assertion that the submission was made on September 11.

13. The Government did not complete its review of the 1996 Plan of Operation (FF 11) until September 25, 1995. The Government explained the lapse of time between June and September in completing its analysis of financial data and review of the Plan of Operation as follows:

Delays were experienced in completing these tasks due to excessive workload to support implementation of the Federal Crop Insurance Reform Act of 1994, the Federal Crop Insurance Corporation’s data system reengineering project, and program changes for prevented planting. [The Government] also sought clearance

on 1996 Plan approval letters from the Office of the General Counsel which also contributed to delays in Plan approvals.

(AF at 204.) In later correspondence, the FCIC responded to RHIS contentions of inordinate delays and lack of service:

The [Government] will strive to alleviate the delays you have mentioned. This has been a difficult year and the [Government] has experienced delays due to a lack of available staff to properly complete an increase in workload. We understand that these delays inconvenience RHIS and other reinsured companies we service. We hope to address this problem as quickly as possible.

(AF at 255). None of the stated causes of delay are attributable to the Appellants.

14. On October 6, 1995, the FCIC informed RHIS that it required two copies of the 1996 SRA signed by CIGNA Insurance Company because the 1995 SRA was with CIGNA Property and Casualty Insurance Company (AF at 187).

15. By letter dated October 11, 1995, to the FCIC, RHIS sought reimbursement of the first installment and interest thereon from September 27, 1995, to the date of payment. RHIS notes that in “discussions with the [Government’s] Finance Branch in Kansas City, they are awaiting an approved Plan of Operation from Washington before they are able to program the Company’s Plan of Operation, generate an Accounting Report and make a payment” (AF at 118).

16. The FCIC informed RHIS, by letter dated October 12, 1995, that the Government is not approving the 1996 Plan of Operation because financial requirements were not met to cover the requested maximum reinsurable premium volume. In the letter, the Government requested a response as soon as possible to allow the Government to continue to review the 1996 plan. (AF at 119-120.)

17. By letter dated October 12, 1995, RHIS responded to the FCIC letter of the same date (FF 16). Although it made the adjustments requested by the FCIC, RHIS stated that it disagreed with the FCIC analysis. Moreover, RHIS noted that it expected approval of the 1996 Plan of Operation and reimbursement for the accounting report submitted September 11 plus interest from September 27 to date of payment. (AF at 121.)

18. Under cover letter dated October 13, 1995, RHIS submitted additional information requested by the FCIC. The letter also specified that RHIS would, upon its receipt, provide, as requested, a list of licenses held by two companies. (AF at 123-131.)

19. By letter dated October 18, 1995, the FCIC informed RHIS that RHIS must revise its 1996 Plan of Operation in order to comply with Manual 14, incorporated into the SRA. The letter

indicated the applicable provisions of the manual and the corrections RHIS was required to make. (AF at 132-133.)

20. With a submission dated October 20, 1995, RHIS changed the name of the reinsured company on the 1996 SRA to CIGNA Insurance Company (AF at 134-166). Under a cover letter dated October 24, 1995, RHIS made further changes to its submissions (AF at 167-184). By submission dated October 25, 1995, RHIS provided a list of licenses held by two companies, FF 18 (AF 185). On October 26, 1995, RHIS provided properly-executed signature pages for the 1996 SRA, FF 14 (AF at 186).

21. On October 27, 1995, the Government approved and accepted the 1996 SRA (FF 3).

22. On October 31, 1995, the Government made the initial payment under the 1996 SRA of \$1,604,234.38. This payment did not include any amount for interest. (AF at 207.)

23. By letter dated July 15, 1996, pursuant to 7 C.F.R. § 400.169(a), RHIS sought a determination by the Acting Director of Insurance Services regarding the FCIC's failure to pay RHIS interest of \$9,659 for the period of September 27 through October 31, 1995 (AF at 206-207).

24. By letter dated March 5, 1997, the Acting Deputy Administrator for Insurance Services denied the request for interest. The determination concludes that no claim under the CDA existed, because only routine requests for payment existed. The determination focuses solely on the requests for payment of the principal amount of the first installment, not interest related thereto. The determination also specifies that the FCIC had no obligation to make a payment under the SRA until the FCIC approved the plan of operation and the agreement became effective. (AF at 209-210.) This determination became the final administrative determination of the FCIC with respect to the applicable issues (7 C.F.R. § 400.169(a)).

25. RHIS and R&H filed a timely appeal of the determination with the Board on June 13, 1997. (7 C.F.R. § 400.169(d)).

DISCUSSION

The parties dispute the meaning of the interest provision, and its application regarding the facts of this case.

The interest provision

The SRAs obligate the FCIC to “pay interest to the Company in accordance with the interest provisions of the Contract Disputes Act (41 U.S.C. 601 *et seq.*)” (FF 7). Appellants interpret this provision to establish the rate and method of calculating interest on money the FCIC fails to pay in a timely manner. The Government asserts that interest is payable under this provision only when the company follows the procedures dictated in the CDA, namely, the company submits a claim (certified, if for an amount over \$100,000) to a Contracting Officer, with the term claim defined as

in the Federal Acquisition Regulation (FAR), 48 C.F.R. § 33.201. The Government maintains that RHIS submitted only routine requests for payment, such that a claim was never submitted, and, thus, that the interest provision is not applicable here.

Consistent with the interpretation proffered by the Appellants, the SRAs dictate when the FCIC is to make a payment--the first banking day following the fourteenth calendar day after the FCIC receives information upon which the payment is based (FF 6). If the FCIC breaches its obligation to make a timely payment, the SRAs establish the resulting effect: the FCIC is to pay interest in accordance with the CDA, which establishes rates and a methodology for calculating interest. The payment of such interest is akin to that described in the Prompt Payment Act, 31 U.S.C. §§ 3901-3907 (1994). Thus, a contractual incentive exists for the FCIC to make payments in a timely manner.

The SRAs do not identify a Contracting Officer, define the term “claim,” or identify any rights or obligations of the company under the CDA in terms of resolving a dispute (FF 9). The Government contends that these notions are established in the SRAs by implication, by the reference to the CDA. However, such an interpretation is contrary to the dispute resolution procedures set forth in the SRAs, established by regulation (7 C.F.R. § 400.169) pursuant to statute (7 U.S.C. § 1506), which dictate what a company is to do if it believes the FCIC has taken an action that is contrary to the provisions of an SRA (FF 9.). In the context of these SRAs, something more than a simple reference to the CDA in a provision for interest is required to invoke the structured CDA procedures for a company to recover interest on amounts untimely paid by the FCIC.

By statute, the FCIC “shall determine the character and necessity for its expenditures . . . and the manner in which they shall be incurred, allowed, and paid, without regard to the provisions of any other laws governing the expenditure of public funds” (7 U.S.C. § 1506). The payment of interest is not prohibited. The SRAs dictate when interest is to be paid. The Board does not read the provision as restrictively as does the FCIC.

The interpretation put forward by the Appellants is supported by a reading of the SRA as a whole, whereas the Government’s interpretation adds significant requirements to the SRA by implication and without foundation. Further, the Government’s interpretation runs contrary to the dispute resolution procedures established in regulations. Such an interpretation is not favored, and here is not reasonable, when the interpretation advanced by the Appellants is consistent with the regulations.

Application of the interest provision

The Appellants maintain that RHIS was entitled to payment on September 27, 1995. Apparently this date represents the first business day following 14 calendar days after the FCIC received the accounting report which entitled RHIS to payment of the first installment of its expense reimbursement (FF 5-6, 12). The Government contends that payment was not due that day, or prior to the actual date of payment, because the SRAs were not effective until the FCIC had approved the Plan of Operation for 1996 (FF 4); the FCIC approval did not occur until October 27, 1995 (FF 21).

The FCIC correctly states that its approval of the Plan of Operation occurred on October 27, 1995, and that the SRA was not to be effective until such approval occurred. However, the delay in the approval was attributable to no fault, action, or inaction by RHIS. It was because of Government delay that the Government's review of the plan submitted in June 1995 was not completed until the end of September 1995. (FF 13.) RHIS readily responded to the FCIC concerns, such that the plan was finalized and approved approximately three weeks after the FCIC began communicating its concerns to RHIS (FF 14, 16-21). The record establishes that delays of at least one month are attributable to the Government and beyond what should be expected in the initial review of a Plan of Operation. But for the Government's delay in the initial review process, the plan would have been finalized and approved prior to September 27, such that payment could have occurred. (FF 15.) Parties to a contract are to cooperate and not hinder performance. Because the FCIC failed to satisfy these basic requirements of an agreement, it may not here successfully contend that the lack of an approved Plan of Operation means that it was not obligated to make the payment by September 27.

The Board concludes that the Appellants are entitled to interest for the period requested under the terms of the SRAs.

Calculation of interest

The Appellants have not supported the calculation of interest for the 34 days in question (September 27 through October 31, 1995). The proper calculation of the interest on the initial installment at the annual simple interest rate of 6.375 percent for 34 days is as follows: $\$1,604,234.38 \times .06375$ (interest rate per year) $\times 34$ (days) $\div 365$ (days/year) = \$9,526.52.

DECISION

This Board grants the appeal. The FCIC shall pay the Appellants \$9,526.52.

JOSEPH A. VERGILIO

Administrative Judge

Concurring:

EDWARD HOURY

Administrative Judge

HOWARD A. POLLACK

Administrative Judge

Issued at Washington, D.C.

January 22, 1999